

# MICHIGAN SUPREME COURT



## *Office of Public Information*

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FOR IMMEDIATE RELEASE

### **HISTORIC CENTREVILLE COURTHOUSE SETTING FOR MICHIGAN SUPREME COURT ORAL ARGUMENT; ST. JOSEPH COUNTY HIGH SCHOOL STUDENTS TO STUDY CASE, ATTEND ORAL ARGUMENT**

Lansing, MI, May 12, 2009 – The historic 1899 courthouse in Centreville, St. Joseph County, will be the setting for a Michigan Supreme Court oral argument on May 13, attended by high school students representing schools throughout the county.

While the Court normally hears oral argument at the Michigan Hall of Justice in Lansing, the Centreville event marks the fourth time the Court will hear a case as part of its “Court Community Connections” program.

Chief Justice Marilyn Kelly explained that Court Community Connections “is about helping students, particularly at the high school level, better understand the work of the Michigan justice system, particularly the role of the appellate courts.”

After discussing the case with local attorneys, 20 local students and their teachers will have front-row seats during oral argument in the Centreville courthouse. Following argument, the students will meet with attorneys in the case to debrief the issue.

The chief justice thanked the St. Joseph community for hosting the Supreme Court. “We are especially indebted to Judge Thomas E. Shumaker, Chief Judge of the St. Joseph County Probate Court; Judge Jeffrey Middleton, Chief Judge of 3B District Court; the St. Joseph County Bar Association; and the other organizers who made this event possible,” Kelly said.

The oral argument will be held in the Centreville Historic Courthouse, located at 125 West Main Street, Centreville. The oral argument will begin at 2 p.m. Seating is limited and is on a first-come, first-served basis. Those who wish to attend oral argument are encouraged to arrive at 1:15 p.m. to begin security screening.

The case is [\*Roberts v Saffell\*](#), which the Court agreed to hear as an oral argument on application.

***Please note:*** The summary that follows is a brief account of the case and may not reflect the way in which some or all of the Court’s seven Justices view the case. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of the case. Briefs are available on the Supreme Court’s “One Court of Justice” web site at

[http://www.courts.michigan.gov/supremecourt/Clerk/MSC\\_orals.htm](http://www.courts.michigan.gov/supremecourt/Clerk/MSC_orals.htm). For further details about the case, please contact the attorneys.

**ROBERTS v SAFFELL (case no. 137749)**

**Attorney for plaintiffs Richard R. Roberts and Stacey D. Roberts:** Mark R. Granzotto/(248) 546-4649

**Attorney for defendants Robert L. Saffell and Joanne O. Saffell:** Mark R. Bendure/(313) 961-1525

**Attorney for amicus curiae Michigan Association of Realtors:** Gregory L. McClelland/(517) 482-4890

**Trial court:** Leelanau County Circuit Court

**At issue:** After spending numerous summers at their Leland home, the defendants in this case sold their home to the plaintiffs. The defendants had experienced some springtime swarms of flying insects in the home, but pest control personnel took care of it and allegedly told the defendants not to worry. On a Seller's Disclosure Statement, the defendants answered "No" when asked if there was "any history of infestation." After they bought the home, the plaintiffs learned that the flying insects were termites and that the entire home was structurally unsound, at least in part because of termite damage. The defendants maintain that they did not know there was a termite infestation in the house, and that the plaintiffs cannot sue them under the Seller Disclosure Act because that statute imposes liability only in cases where the sellers know they are making false statements on seller disclosure forms. Is innocent misrepresentation a viable theory of liability under the Seller Disclosure Act? Did the defendants fail to preserve their argument under the Act where they raised it at trial but did not expressly do so at the Court of Appeals? If so, did they waive that argument, so that the Court of Appeals could not consider the issue? Could the plaintiffs' claim proceed on the basis that the actual issue presented to the jury was whether the defendants did know about the termite infestation and intentionally withheld that information from the plaintiffs?

**Background:** Robert and Joanne Saffell had a summer home in Leland, Michigan for over 30 years. In spring 2002, Ms. Saffell saw a swarm of insects, which looked to her like ladybugs or flying ants, inside the house; she called a pest control company. According to Ms. Saffell's later testimony, the pest control technician told her that the insects were "harmless" and that such swarms were just part of living in the area. In spring 2003, the Saffells' son and daughter-in-law saw another insect swarm at the house, but they did not think anything of it and did not mention the episode to either of the Saffells.

In June 2003, the Saffells decided to sell their summer home. Richard and Stacey Roberts, acquaintances of the Saffells' son, were interested in buying the property. At Richard Robert's request, the Saffells prepared and signed a Seller Disclosure Statement, which included a question about whether there was any "history of infestation . . . (termites, carpenter ants, etc)." The Saffells answered "No."

In September 2003, the Robertses signed a Purchase and Sale Agreement for the property; the sale was finalized in October 2003. The agreement gave the Robertses 14 days to have a professional inspection of the home for such things as structural integrity and pests. The agreement also stated that, "if the Purchaser fails to have these inspections, studies, or tests performed, or fails to raise the matters pursuant to this provision, the Purchaser shall be deemed

to have accepted the property subject to any material or adverse condition that such inspection, study or test would have disclosed.” The agreement also stated that the “Purchaser further acknowledges that in entering into this agreement Purchaser is not relying upon any representation made by any realtor.” The Robertses did not have the house inspected for possible pests.

About two weeks after the sale, Ms. Saffell provided a tip sheet to the Robertses about various special things concerning the home, including the comment, “A million bugs will hatch in spring some day all of a sudden. We’ve had a pest company come and there’s no way to avoid them but they don’t last long.” Ms. Saffell thought at the time that the flying insects might be Asian ladybugs.

The following April, the insects showed up again and flew about the house for about two weeks. The Robertses hired a pest control specialist, who told them that the flying insects were termites.

In January 2005, Mr. Roberts hired a contractor to begin work on planned extensive renovations to the house. As the contractor began to remove some drywall, he discovered that the house was structurally unsound; part of the problem appeared to be termite damage. Fearing that the house was unsafe, the contractor stopped work and advised the Robertses that a builder was needed to shore up the house before remodeling work could proceed.

In November 2005, the Robertses sued the Saffells, seeking damages for the termite infestation in the house. The original complaint included counts for breach of contract, fraudulent misrepresentation (common law fraud), silent fraud, and innocent misrepresentation, all based on the Saffells’ response to the Seller Disclosure Statement regarding insect infestation. Shortly before trial, the trial court allowed the Robertses to amend their complaint so that only the innocent misrepresentation count was left.

Both before and during the trial, the Saffells’ attorney argued that the court should dismiss the one remaining claim of innocent misrepresentation against his clients. Under the Seller Disclosure Act, a misstatement in a Seller Disclosure Statement would be the basis for a lawsuit only if the Saffells knew the statement was false when they made it, the attorney argued. The Saffells testified that they did not know about the termite infestation.

But the judge allowed the innocent misrepresentation claim to go to the jury. He instructed the jury that, to find in favor of the Robertses, the jurors had to find either that the Saffells knew that their Seller Disclosure Statement was inaccurate, or that the Saffells would have discovered the inaccuracy by the exercise of ordinary care. The jury returned with a \$86,813 verdict in favor of the Robertses. The Saffells’ attorney filed a number of motions challenging the jury’s verdict, but the judge denied the motions. The Saffells appealed to the Michigan Court of Appeals. Like all appeals to that court, the case was considered by a panel of three judges.

In a published opinion issued August 21, 2008, the appellate panel ruled 2-1 in favor of the Saffells, concluding that the Robertses had failed to state a claim upon which relief could be granted. The Seller Disclosure Act does not contemplate actions for innocent misrepresentation,

which was the sole pleaded basis for the Robertses' claim, the majority said. Instead, the Act requires that a seller have actual knowledge that a representation is false, inaccurate or misleading, in order for the seller to be liable for a statement covered by the Act, the majority stated.

The dissenting judge indicated that she would have affirmed the trial court judgment. She noted that the Saffells made different arguments on appeal than they did in the trial court, and suggested that the majority could not base its opinion on an argument that the Saffells had not made on appeal. The actual issue presented to the jury, the dissenting judge said, was whether the Saffells knew of the termite infestation and intentionally withheld that information from the Robertses.

The Robertses filed an application for leave to appeal to the Michigan Supreme Court. On April 8, 2009, the Supreme Court issued an order stating that it would hear the case as an oral argument on application.

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